IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3161 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANAGER/SECRETARY,DAYARAM KELVANI MANDAL SANCHALIT

Versus

MUKUNDKUMAR VISHNUPANT SATHE

Appearance:

1. Special Civil Application No. 3161 of 2005

MS MAMTA R VYAS for Petitioner No. 1-2

MR SHITAL R PATEL for Respondent No. 1

MR DIPEN DESAI, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/05/2005

ORAL JUDGEMENT

#. In this matter, the notice is already issued for

final disposal and that is how, the present petition is disposed of finally.

#. In this petition under Article 226 of the Constitution of India, the petitioners have prayed for appropriate writ, direction of order quashing and setting aside the judgment and order passed by the Gujarat State Primary Education Tribunal ("the Tribunal" for short) dated 10.01.2005 in Application No.270 of 1993 by which the Tribunal has passed the order by which it is directed that 50% of the salary paid to the original applicant i.e. respondent no.1 for the period between 21.02.1994 till February, 2003 be paid by the petitioner - School Management and should be recovered from the grant to be paid to the petitioner - Management.

#. It appears from the record that the respondent no.1 was appointed in the petitioner - school and that there was some dispute with regard to inclusion of name of respondent no.1 in the pay bill with regard to direct payment salary and thereafter appointment of respondent no.1 was not approved by the Director of Primary Education, and, therefore the same was challenged by respondent no.1 before the Gujarat Primary Education Tribunal by way of Application No.270 of 2003 and interim order came to be passed by the Tribunal restraining the petitioner - School Management from withholding salary of original applicant. It appears that in spite of the aforesaid interim order by which the School Management was restrained from withholding salary of respondent no.1 original applicant, the School Management sent the pay bill of respondent No.1 to the District Education Officer and, in fact, the salary came to be paid to respondent no.1 by District Education Officer directly under the Direct Payment Scheme. It appears that ultimately the aforesaid Application No.270 of 1993 came to be finally heard by the Tribunal on 10.05.2005 and the Tribunal allowed the said application on merits by quashing and setting aside the order passed by the Director of Primary Education in not approving the appointment of respondent no.1. However, considering the fact that the petitioner Management did not comply with the interim order dated 21.02.1994 and the pay bill was being sent to the District Education Officer and that the District Education officer paid the salary to respondent no.1 under the Direct Payment Scheme directly and as there was breach of interim order dated 21.02.1994, while disposing of the aforesaid Application No.270 of 1993, the Tribunal passed the order directing the petitioner management to pay 50% of the salary paid to respondent no.1-original applicant for a period between 21.02.1994 till February,

2003 and the same is challenged by the petitioner in the present petition under Article 227 of the Constitution of India.

#. Ms.Mamta Vyas, learned advocate appearing for the petitioner, has submitted that when the main application is allowed on merits and appointment of respondent no.1 original applicant is held to be in accordance with the rules and is legal, the Tribunal has materially erred in directing 50% of the salary to be paid by the petitioner Management, more particularly, when the action of the Director, Primary Education is held to be illegal. It is submitted that to direct the petitioner to pay 50% of the salary for the period from 21.02.1994 to February, 2003 on the ground that there was breach of interim order dated 21.02.1994 is too harsh and if that is considered to be penalty then the Tribunal ought to have passed the order to impose some reasonable penalty. It is submitted that even the District Education Officer continued to pay salary to respondent no.1 directly under the Direct Payment Scheme, and, therefore even there was fault on the part of the District Education Officer and also it is further submitted that if assuming that the said amount of salary for the aforesaid period between 21.02.1994 to February, 2003 would have been paid by the petitioner Management, in that case also, now, in view of allowing application and quashing and setting aside the order passed by the Director of Primary Education in not approving the appointment of respondent no.1 - original applicant and holding the appointment of respondent no.1 - original applicant in accordance with law and the Rules and Regulations and legal one, the petitioner Management would be entitled to salary from the Director of Primary Education / District Education Officer, and, therefore it is requested to allow the present petition.

#. In response to the notice issued by this Court, Mr.Desai, learned advocate appears for the State Government. It is submitted that by interim order dated 21.02.1994 passed by the Tribunal, the salary was paid by the petitioner - School Management and in spite of that they sent the pay bill to the District Education Officer and in turn salary came to be paid to the respondent no.1 - original applicant directly by the District Education Officer under the Direct Payment Scheme, and, therefore there was breach of interim order dated 21.02.1994, and, therefore the Tribunal is justified in passing the aforesaid order.

#. Heard the learned advocates for the parties.

#. It is not in dispute that by the impugned judgment and order dated 10.01.2005, the Tribunal has allowed the main application by quashing and setting aside the action of the Director of Primary Education in not approving the appointment of respondent no.1 - original applicant. It is also not in dispute that the Tribunal has passed the order declaring the appointment of respondent no.1 original applicant as in accordance with law and further declaring that the respondent no.1 - original applicant is entitled to salary as per the Rules and Regulations from the date of his appointment, meaning thereby, the petitioner was entitled to salary under the Direct Payment Scheme from the date of his appointment. In that view of the matter, as the petitioner was entitled to salary from the State Government under the Direct Payment Scheme, if the respondent No.1 would have been paid salary by the Management then the petitioner Management was entitled to reimbursement of the same from the State Government. However, instead of making the payment of salary by the petitioner - Management to respondent no.1 for the interregnum period, salary came to be paid by the District Education Officer under the Direct Payment Scheme. It is true that as per the order dated 21.02.1994 the petitioner was restrained from withholding the salary of respondent no.1, meaning thereby, indirectly salary was to be paid by the petitioner Management instead of that for some reason, the petitioner sent the pay bill to the District Education Officer and, in fact, District Education Officer also paid salary to respondent no.1 directly under the Direct Payment Scheme. If, there was already order passed by the Tribunal directing the petitioner management to pay salary then, the District Education Officer ought not to have even sanctioned the pay bill of respondent No.1 and ought not to have paid the same directly under the Direct Payment Scheme. Thus, even the District Education Officer was also responsible to some extent.

#. Considering the aforesaid facts and circumstances of the case, to direct the petitioner management to pay 50% of the salary of respondent no.1 for the period between 21.2.1994 till February 2003 and to deduct the same from the maintenance grant will be too harsh. Ms.Vyas, learned advocate appearing for the petitioner, has submitted that the petitioner is ready and willing to pay some reasonable costs by way of penalty and/or punishment for not complying with the interim order dated 21.2.1994 and the same may be deducted from the grant which is to be paid to the petitioner school management. Considering the facts and circumstances of the case and considering the fact that the Tribunal has allowed the main

application by quashing and setting aside the action of the Director of Primary Education in not approving the appointment of respondent no.1 and also declaring that appointment of respondent no.1 - original applicant is in accordance with law and that the original applicant is entitled to salary as per the Rules and Regulations from the date of his appointment, meaning thereby, respondent no.1 is entitled to salary under the Direct Payment Scheme from the State Government, ends of justice will be met if the petitioner is directed to pay Rs.25,000/- instead of 50% of salary for the period from 21.2.1994 till February 2003 and the said amount of Rs.25,000/- is directed to be adjusted and/or recovered from the grant to be paid to the petitioner management. The judgment and order passed by the Tribunal dated 10.1.2005 in Application No.270 of 1993 is modified to the aforesaid extent only.

#. For the reasons stated above, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)